



Department of Justice

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FOR IMMEDIATE RELEASE

Wednesday, July 18, 2007

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MIDDLE DISTRICT OF ALABAMA'S RESPONSE TO ERRORS IN SIEGELMAN/SCRUSHY NATIONAL NEWS ACCOUNTS

This is to respond to recent articles and editorials published in various newspapers and other media pertaining to the convictions and recent sentencing of former Alabama Governor Don Siegelman and former HealthSouth CEO Richard Scrushy. These articles and editorials have called into question the legitimacy of the motivation for prosecuting these individuals. They contain factual errors and omissions that portray an inaccurate and misleading version of the events leading to the convictions.

Each of these accounts ignores and omits numerous significant facts, including the following:

1. that the career prosecutors (i.e., not political appointees) handling the investigation and case after U.S. Attorney Leura Canary's recusal have issued statements unequivocally denying that Karl Rove or anyone from the Justice Department pushed them to bring charges or pursue them to conviction (Attachments 6 and 12);
2. that the purported telephone conversation described in an affidavit by Dana Jill Simpson has been denied by all alleged participants but Ms. Simpson and, indeed, even Mr. Siegelman denies those portions of Ms. Simpson's affidavit that relate to him and explain Ms. Simpson's version of the basis for Mr. Siegelman dropping his 2002 re-election loss protest (Attachments 5 and 15);
3. that Mr. Siegelman was already under investigation more than ten months before the alleged conference call took place, before Ms. Canary became U.S. Attorney, and the investigation had been widely reported (Attachments 2 and 6);
4. that the investigation was actually spurred by evidence uncovered by an investigative reporter for The Mobile Press-Register and a series of articles

written by him (Attachments 6 and 8);

5. that Ms. Canary had already voluntarily removed herself from the case more than six months before Mr. Canary allegedly assured everyone that his “girl,” Ms. Canary, would take care of Mr. Siegelman (Attachments 3, 6 and 7);
6. that Ms. Simpson’s affidavit may have been motivated by her relationship with a disappointed bidder who lost out on a \$7.1 million state contract awarded by Governor Riley to a competitor with a lower bid (Attachments 5 and 14);
7. That Ms. Simpson first told Mr. Scrushy’s lawyers of the alleged incidents made the basis of her affidavit in February 2007, and she prepared the affidavit at their urging, meeting with Scrushy and his lawyers on several occasions during the months before she signed her affidavit on May 21, 2007 (Attachments 1, 9 and 10); yet, the reporters are not exploring her relationship with Scrushy and Siegelman and their role in the affidavit; and
8. that Ms. Simpson’s affidavit has not been filed by Mr. Siegelman or Mr. Scrushy in the actual court case, the allegations of selective prosecution having been raised by Mr. Siegelman solely in the media (Attachments 1, 9 and 13).

* * * * *

Additional explanation regarding these facts and omissions follow.

Don Siegelman, former Governor of the State of Alabama, and Richard Scrushy, former HealthSouth CEO, were sentenced and sent to prison three weeks ago. More than a year before, in June 2006, Mr. Siegelman and Mr. Scrushy were convicted by a federal jury of twelve of their peers of bribery, honest services mail fraud, and conspiracy. Mr. Siegelman was also convicted of obstruction of justice. Before that, a federal grand jury independently reached the same conclusions and indicted them on those and other charges.

Nonetheless, many news organizations have seized upon one woman’s tenuous allegations, contained in an affidavit written in May 2007 – almost a year after Mr. Siegelman’s conviction – and interpreted her unsubstantiated claims into a conspiracy that allegedly links Mr. Siegelman’s prosecution to Karl Rove. The claims published by several national publications make claims far exceeding the original allegations of the affidavit, and at the same time inexplicably omit extremely pertinent facts.

The affidavit, made by Rainsville, Alabama, attorney Dana Jill Simpson (Attachment 1), focuses on statements allegedly made by William “Bill” Canary, husband of the U.S. Attorney for the Middle District of Alabama. Mr. Canary is identified in the affidavit as an advisor to Bob Riley, then a candidate for Governor. Ms. Simpson claims that Mr. Canary stated in a post-election November 2002 telephone conversation that he had “gotten it worked out with Karl and

Karl had spoken with the Department of Justice and the Department of Justice was already pursuing Don Siegelman.”

Ms. Simpson was recently interviewed and, according to a story by Brett J. Blackledge appearing in *The Birmingham News* on July 8, 2007 (Attachment 2), Ms. Simpson cannot say whether Rove was being identified in the call as the person behind the investigation or simply as someone who heard that Siegelman was already under investigation. She admitted that the alleged conversation described in her affidavit could be interpreted either way. She also stated that her affidavit does not say, and was not intended to say, that Rove was behind the investigation. In fact, as the article points out, nearly ten months before the alleged November 2002 conversation took place, *The Birmingham News* reported that Siegelman was under federal investigation. Moreover, the investigation was widely reported throughout the State of Alabama prior to the election. In fact, eight months earlier, in March 2002, Siegelman and his counsel, David Cromwell Johnson, convened a press conference about the investigation and, using caged canaries as a prop, demanded that Ms. Canary recuse herself from the case (*see* Attachment 3 at p. 2). That press conference was broadcast on new reports throughout the state.¹

In any event, relying on the same affidavit, the national media has published:

Time Magazine: “A longtime Republican lawyer in Alabama swears she heard a top GOP operative in the state say that Rove ‘had spoken with the Department of Justice’ about ‘pursuing’ Siegelman, with help from two of Alabama’s U.S. attorneys.” Adam Zagorin, *Rove Linked to Prosecution of Ex-Alabama Governor*, *Time*, June 1, 2007.

The New York Times article by Adam Nossiter: “The lawyer, Jill Simpson, claims to have heard a top Alabama Republican operative with longstanding links to Mr. Rove boast over the phone in 2002 that Mr. Siegelman’s political career would soon be scuttled.” Adam Nossiter, *Ex-Governor Says Conviction Was Political*, *The New York Times*, June 27, 2007.

The New York Times editorial: “The most arresting evidence that Mr. Siegelman may have been railroaded is a sworn statement by a Republican lawyer, Dana Jill Simpson. Ms. Simpson said she was on a conference call in which Bill Canary, the husband of the United States attorney whose office handled the case, insisted that ‘his girls’ would ‘take care of’ Mr. Siegelman. According to Ms. Simpson, he identified his ‘girls’ as his wife, Leura Canary, and another top Alabama prosecutor. Mr. Canary, who has longstanding ties to Karl Rove, also said, according to Ms. Simpson, that he had worked it out with

¹ Three days after Mr. Blackledge’s article was published, on July 11, 2007, Ms. Simpson issued a new statement which was published in *The Montgomery Independent* (Attachment 4). In her latest statement, Ms. Simpson addresses the Blackledge article and attempts to recede from her position by stating what she assumed Mr. Canary allegedly meant by the comments she attributes to him.

‘Karl.’” *Questions About a Governor’s Fall*, The New York Times, June 30, 2007.

Each of these accounts ignores and omits numerous significant facts, including for instance:

1. that the career prosecutors (i.e., not political appointees) handling the investigation and case after Ms. Canary’s recusal have issued statements unequivocally denying that Karl Rove or anyone from the Justice Department pushed them to bring charges or pursue them to conviction (Attachments 6 and 12);
2. that the purported telephone conversation has been denied by all alleged participants but Ms. Simpson and, indeed, even Mr. Siegelman denies those portions of Ms. Simpson’s affidavit that relate to him and explain Ms. Simpson’s version of the basis for Mr. Siegelman dropping his 2002 re-election loss protest (Attachments 5 and 15);
3. that Mr. Siegelman was already under investigation more than ten months before the alleged conference call took place, and the investigation had been widely reported (Attachment 2);
4. that the investigation was actually spurred by evidence uncovered by an investigative reporter for The Mobile Press-Register and a series of articles written by him (Attachments 6 and 8);
5. that Ms. Canary had already voluntarily removed herself from the case more than six months before Mr. Canary allegedly assured everyone that his “girl,” Ms. Canary, would take care of Mr. Siegelman (Attachments 3, 6 and 7);
6. that Ms. Simpson’s affidavit may have been motivated by her relationship with a disappointed bidder who lost out on a \$7.1 million state contract awarded by Governor Riley to a competitor with a lower bid – Ms. Simpson wrote letters on his behalf and he gave a companion affidavit asserting that Ms. Simpson also told him about the alleged phone call (Attachments 5 and 14);
7. That Ms. Simpson first told Mr. Scruschy’s lawyers of the alleged incidents made the basis of her affidavit in February 2007, and she prepared the affidavit at their urging, meeting with Scruschy and his lawyers on several occasions during the months before she signed her affidavit on May 21, 2007 (Attachments 1, 9 and 10); yet, the reporters are not exploring her relationship with Scruschy and Siegelman and their role in the affidavit;
8. that Ms. Simpson’s affidavit was never filed by Mr. Siegelman or his co-defendants in the actual court case, all allegations of selective prosecution having

been raised by Mr. Siegelman solely in the media and never in the actual court case, where an evidentiary hearing to explore the truth of the allegations could have been conducted (Attachments 1, 9 and 13); and

9. that Adam Nossiter of *The New York Times* quoted G. Robert Blakey at length in his June 27, 2007, article regarding the purported “shakiness of the federal case against” Mr. Siegelman and the prosecutors’ alleged “garbage-can theory of RICO,” identifying Blakey as “a law professor at the University of Notre Dame and former prosecutor” and as “the professor, whose career at the Justice Department began in 1960,” and never once mentioned that Blakey was actually Mr. Siegelman’s lawyer, an advocate on his behalf (Attachment 11).

The Course of the Investigation

On June 6, 2007, Louis Franklin, a 15+ year prosecutor and Acting U.S. Attorney in the Siegelman/Scrusby case, issued a statement that has been universally ignored by the national media (Attachment 6). In his statement, he confirmed that Karl Rove had no role whatsoever in bringing about the investigation or prosecution of former Governor Don Siegelman. He has never met or spoken with Mr. Rove. The decision to bring charges was made by Mr. Franklin in conjunction with the Department of Justice’s Public Integrity Section and the Alabama Attorney General’s Office. His decisions were based solely upon the evidence in the case that former Governor Siegelman and Mr. Scrusby committed serious federal crimes.

Mr. Franklin’s decision to prosecute Don Siegelman and Richard Scrusby was based upon evidence uncovered by federal and state agents, as well as by a federal special grand jury. The investigation was actually precipitated by evidence uncovered by a Mobile investigative reporter, Eddie Curran, and a series of stories written by him (*see* Attachment 8). The investigation began shortly after an article appeared in the Mobile Press-Register alleging an improper connection between then-Governor Siegelman and financial supporter/businessman/lobbyist, Clayton “Lanny” Young, months before Leura Canary was appointed as the U.S. Attorney for the Middle District of Alabama (MDAL).

When the investigation first began, Leura Canary was not the U.S. Attorney for the MDAL. Initially, the case was opened by the Interim U.S. Attorney, Charles Niven, a career prosecutor in the U.S. Attorney’s Office. Niven had almost 25 years of experience as an Assistant U.S. Attorney in the office prior to his appointment as Interim U.S. Attorney upon U.S. Attorney Redding Pitt’s (currently attorney of record for Defendant Siegelman in this case) departure, and served under both Republican and Democratic U.S. Attorneys.

Ms. Canary became U.S. Attorney in September 2001. In May 2002, very early in the investigation, and before any significant decisions in the case were made, U.S. Attorney Leura Canary completely recused herself from the Siegelman matter, in response to unfounded accusations that her husband’s Republican ties created a conflict of interest. Although Department of Justice officials reviewed the matter and opined that no conflict, actual or

apparent, existed, Canary voluntarily recused herself anyway to avoid even an appearance of impropriety. (*See* Attachment 7)

Thereafter, Mr. Franklin was appointed Acting U.S. Attorney in the case, upon Charles Niven's retirement in January 2003. (Attachment 6) After his appointment, Mr. Franklin made all decisions in the case on behalf of the office. Ms. Canary had no involvement in the case, directly or indirectly, and made no decisions in regards to the investigation or prosecution after her recusal. Immediately following Ms. Canary's recusal, appropriate steps were taken to ensure the integrity of the recusal, including establishing a "firewall" and moving all documents relating to the investigation to an off-site location. The off-site became the nerve center for most work done on the case, including but not limited to witness interviews and the receipt, review, and discussion of evidence gathered during the investigation.

After Ms. Canary's recusal, the investigation proceeded much like any other investigation. Federal and state agents began tracking leads first developed by investigative reporter Eddie Curran. Mr. Curran's leads eventually led to the career prosecution team in the MDAL bringing criminal charges against local architect William Curtis Kirsch, Clayton "Lanny" Young, and Nick Bailey, an aide to the former Governor. Kirsch, Young, and Bailey pled guilty to informations charging violations of federal bribery and/or tax crimes on June 24, 2003. (Attachment 6)

Armed with cooperation agreements from Bailey, Young and Kirsch, the investigation continued. In June 2004, a special grand jury was convened at the request of the prosecution team to further assist in the investigation. An indictment was returned under seal against Mr. Siegelman and ex-HealthSouth CEO Richard Scrushy on May 17, 2005. The first superseding indictment was filed and made public on October 26, 2005, charging Siegelman, Scrushy, Siegelman's former Chief of Staff Paul Hamrick, and Siegelman's Transportation Director Gary Mack Roberts. Immediately after the indictment was announced, Messrs. Scrushy and Siegelman publicly denounced the indictment and personally attacked the prosecutors. Those attacks have continued throughout the case and have now escalated to charges that Karl Rove had something to do with this investigation or prosecution. The charges are simply untrue. The indictment was solely the product of evidence uncovered through an investigation that began before Leura Canary became U.S. attorney and continued for three years after she recused herself. (Attachment 6)

During the investigation, Mr. Franklin consulted with career prosecutors (i.e., non-political appointees) in the Public Integrity Section of Main Justice to obtain guidance on the prosecution of the former Governor, but he alone maintained the decision-making authority to say yea or nay as to whether or not the U.S. Attorney's Office for the MDAL would proceed with the prosecution. Contrary to how the prosecution is portrayed in various newspaper articles and editorials, rather than the U.S. Department of Justice pushing the MDAL to move forward with the prosecution of former Governor Siegelman, the push has always come from the Middle District's U.S. Attorney's Office and has been spearheaded by Mr. Franklin as the Acting U.S. Attorney in the case. His sole motivation for pushing the prosecution was a firmly held belief,

supported by overwhelming evidence and the law, that former Governor Siegelman had broken the law and traded his public office for personal and political favors. (See Attachment 6) Ultimately, a jury of former Governor Siegelman's peers, consisting of men and women, African-Americans and Caucasians, agreed and convicted the former Governor of conspiracy, honest services mail fraud, accepting bribes, and obstructing justice, and Mr. Scrushy of conspiracy, honest services mail fraud, and bribery.

The Two Lead Prosecutors

Louis Franklin is a career Assistant U.S. Attorney in the Middle District of Alabama and is not a political appointee. He has served under both Democratic and Republican appointees. (Attachment 6)

One of his other lead co-prosecutors, Stephen P. (Steve) Feaga, is likewise a career Assistant U.S. Attorney in the Middle District of Alabama. He has also served under both Democratic and Republican appointees and, in fact, was hired by Ms. Canary's Democratic predecessor, Redding Pitt (see Attachment 3). Mr. Feaga is well-known for his participation in a number of high-profile cases, including his successful prosecution of a then sitting Republican Governor of Alabama, Guy Hunt, for illegally using campaign and inaugural funds to pay personal debts. Mr. Feaga has also issued a statement (Attachment 12) stating that "no one pressured [him], in any way, to pursue these charges" against former Governor Siegelman.²

Even Siegelman Disputes Simpson's Affidavit

In response to Ms. Simpson's affidavit, it is important to note that all of the alleged participants, namely, William "Bill" Canary, Terry Butts and Rob Riley, refute that any such conversation took place. (Attachment 5 and 15) According to an article by Dana Beyerle published in the Times Daily on June 24, 2007 (Attachment 5), William Canary has gone on record stating that he has never spoken to Karl Rove or the Department of Justice about prosecuting Don Siegelman. Terry Butts, one of the attorneys for Mr. Siegelman's co-defendant Richard Scrushy, likewise denies any such conversation. Rob Riley also does not recall any such conversation. As reported by Mr. Beyerle (Attachment 5), Mr. Siegelman also contradicts Ms. Simpson's affidavit as it relates to him, stating that when he dropped his 2002 re-election loss protest, it was not for the reasons recited by Ms. Simpson in her affidavit, which related to an alleged Democratic plot to hang Siegelman's opponent's campaign posters near a Ku Klux Klan rally site.

Affidavit Possibly "Sour Grapes"

² There were several other prosecutors from the MDAL U.S. Attorney's Office, the Alabama Attorney General's Office, and the Public Integrity Section of the DOJ who participated in the prosecution.

As for Ms. Simpson's motivation for submitting the affidavit now, an article entitled "Former Riley aide says Siegelman affidavits possibly 'sour grapes'" (Attachment 14) explains that Ms. Simpson's affidavit and a companion affidavit of Mark Bollinger, asserting that Ms. Simpson previously told him about the alleged conversation, outlines the relationship between Simpson and Bollinger that may have led to the affidavits. According to the article, Bollinger's company, Global Disaster Services, lost a bid to clean up millions of scrap tires stockpiled in Attalla, Alabama. The \$7.1 million contract, awarded last year by the Riley administration, went to Bollinger's competitor, which submitted a lower bid. Ms. Simpson represented Bollinger's company in connection with the bid. She wrote Governor Riley a letter in August 2006 on behalf of Bollinger's company, providing additional information about the competitor before official award of the contract. Bollinger was a former aide to a Democratic Attorney General in Alabama.

In her affidavit, Ms. Simpson states that in February 2007, after she "talked to the Alabama Bar, [she] called Richard Scrushy's attorney, Art Leach, and told him why I believed Don Siegelman had conceded and Mr. Butts' role in getting Mr. Siegelman to concede." (Attachment 1) According to an article appearing in The Locust Fork Journal, Ms. Simpson actually called and wrote several letters to attorney Art Leach, who was representing Mr. Scrushy, one of Mr. Siegelman's co-defendants. (Attachment 10) The same article states, "Bollinger also knew Siegelman, so he eventually told Siegelman Ms. Simpson's story. Siegelman called and asked Ms. Simpson to write up an affidavit, but still she refused." (Attachment 10) The article goes on to assert that "Ms Simpson finally came up with the idea to drive across state lines to Georgia and sign the affidavit in a lawyer's office in Dade County." (Attachment 10) It explains that she went to Georgia "[b]ecause she was afraid federal prosecutors or even Alabama's conservative Attorney General Troy King might drag her into court and tie her up with expensive paperwork for years ... for making accusations against a federal judge in an Alabama court filing sent through the mail." (Attachment 10) Yet, the affidavit contains no mention of any accusations against a federal judge. (Attachment 1) Another article states that Ms. Simpson "was involved in a traffic accident on March 1 in which [Simpson's attorney] Duncan says Simpson was deliberately run off the road while driving back from a meeting with Richard Scrushy in Birmingham." (Attachment 10)

According to these articles, Ms. Simpson had numerous contacts with Mr. Scrushy, Mr. Scrushy's counsel, and Mr. Siegelman for several months prior to drafting her affidavit at their urging. Indeed, Ms. Simpson claims to have provided legal advice and services to Scrushy. One article states that she basically wrote, behind the scenes, but did not sign a motion filed by Scrushy seeking to have the federal judge recused. (Attachment 10) Yet, articles identify her as a "Republican" lawyer, and her relationship with Mr. Scrushy and Mr. Siegelman has not been examined by any of the investigative reporters.

Conclusion

It is greatly disturbing that the foregoing facts do not appear in national newspaper articles and editorials seizing on Ms. Simpson's affidavit as cause for Congressional inquiry. As

explained by Assistant U.S. Attorney Feaga in his statement (Attachment 12), “The case of *United States v. Siegelman* was pursued and successfully prosecuted because my co-counsel and I, a grand jury, a trial jury, and a federal judge, after hearing the facts, believed that those facts established that Siegelman unlawfully sold out the best interests of the people of the State of Alabama. Any assertion to the contrary ... is just plain wrong.”

Calling for a congressional inquiry is one thing, but basing the request on an incomplete and inaccurate telling of one side of the story is an abuse of power. The lack of journalistic integrity on the part of national news outlets in reporting this story could subvert justice and undermine valid convictions.

You may contact Louis V. Franklin, Sr., Acting U.S. Attorney in the Siegelman/Scrushy prosecution at 334-223-7280 for further comment.